



The Global Initiative
for Economic, Social and Cultural Rights



Human Rights
Law Centre

Urgent submission to:
the UN Special Rapporteur on the right to adequate
housing,
the UN Special Rapporteur on extreme poverty and
human rights, and
the UN Special Rapporteur on torture and other cruel,
inhuman or degrading treatment or punishment

Submitted by:

Human Rights Law Centre (Australia)

Global Initiative for Economic, Social and Cultural Rights

11 September 2017

1) Introduction

This Submission is made jointly by the Human Rights Law Centre and the Global Initiative for Economic, Social and Cultural Rights.

The Human Rights Law Centre (HRLC) is an independent, not-for-profit, non-governmental organization that protects and promotes human rights in Australia and in Australian activities overseas using a combination of legal action, advocacy, research and capacity building.

The Global Initiative for Economic, Social and Cultural Rights (GIESCR) is an international not-for-profit, non-governmental human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens.

This information is submitted to each of the UN Special Rapporteur on the right to adequate housing, the UN Special Rapporteur on extreme poverty and human rights, and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The information relates to the treatment of refugees and people seeking asylum in Australia and recently announced measures by the Australian Government which put a significant number of people at risk of homelessness and destitution with the stated intent of coercing their return to a harmful environment.

The submitting organisations request that the Special Rapporteurs consider the alleged violations of human rights outlined in this document and send urgent communications to the Australian Government, calling on it to:

- refrain from issuing ‘final departure Bridging E Visas’ to any other refugees or people seeking asylum who have been evacuated from Nauru or Manus Island to Australia for medical treatment;
- immediately reinstate the housing and income supports to the more than 60 people who have been issued with these visas already and ensure that all of those people have access to adequate housing and to sufficient income support to meet their basic needs; and
- allow the affected group to apply for refugee status in Australia and to have their protection claims assessed under Australian law.

We also request that the Special Rapporteurs issue a public statement condemning the Australian Government’s actions. Given the immediate risk of homelessness and destitution faced by the affected group, we request that the Special Rapporteurs act urgently and issue a communication and public statement as soon as possible.

2) Background

Australia's offshore detention regime

Since 19 July 2013, Australian law and policy has been that any person arriving by boat and seeking asylum is subject to mandatory and indefinite detention and mandatory removal to an Australian run and funded 'Regional Processing Centre' (RPC) on either Nauru or Manus Island, Papua New Guinea, where they are held indefinitely. Adult men are held on Manus. Men, women, children (including unaccompanied children) and families are held on Nauru.

Since these policies commenced, Parliamentary and Departmental inquiries,¹ UN investigations,² the Australian Human Rights Commission,³ and numerous leaked documents and whistleblower reports⁴ have revealed that these offshore centres are sites of cruelty, immense suffering and clear human rights violations.

UNHCR chief Filippo Grandi recently condemned Australia's policies as producing a 'dire humanitarian situation', noting that it is more than four years since Australia commenced its offshore detention regime yet 'more than 2,000 people are still languishing in unacceptable circumstances. Families have been separated and many have suffered physical and psychological harm.'⁵

Similarly, the United Nations' Committee on Economic, Social and Cultural Rights recently called on Australia to close the Manus and Nauru centres and repatriate all people held there to safety in Australia, noting in particular the ongoing reports of:

...acute isolation, overcrowding, limited access to basic services, including health care and education, allegations of sexual abuse by the service providers, acts of intimidation, taunting and provocation, and continuing reports of suicide and self-harm.⁶

The affected group

Due to the harmful and unsafe conditions in both RPCs, the history and vulnerability of the people held there and the limited medical facilities on both islands, several hundred people have been

¹ For example, see: Legal and Constitutional Affairs References Committee, *Serious allegations of abuse, self-harm and neglect of asylum seekers in relation to the Nauru Regional Processing Centre, and any like allegations in relation to the Manus Regional Processing Centre*, April 2017, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/NauruandManusRPCs/Report.

² Recent criticisms and findings from various UN agencies, review bodies and Special Rapporteurs are summarised in this article: Butler, J. (2017), 'All The Times The UN Has Slammed Australia's Asylum Seeker Policy', Huffington Post, available at:

http://www.huffingtonpost.com/2017/07/25/all-the-times-the-un-has-slammed-australias-asylum-seeker-polic_a_23046469/.

³ Australian Human Rights Commission, 'The Forgotten Children: National Inquiry into Children in Immigration Detention', November 2014, available at: https://www.humanrights.gov.au/sites/default/files/document/publication/forgotten_children_2014.pdf

⁴ For example, see: <https://www.theguardian.com/news/series/nauru-files>.

⁵ <http://www.unhcr.org/en-au/news/press/2017/7/597217484/unhcr-chief-filippo-grandi-calls-australia-end-harmful-practice-offshore.html>

⁶ Committee on Economic, Social and Cultural Rights, Concluding Observations on Australia, 11 July 2017, E/C.12/AUS/CO/5, paras 17 and 18.

evacuated from those centres and brought to Australia for urgent medical treatment. Those transferred to Australia include men attacked and seriously injured on Manus Island, women who have been sexually assaulted on Nauru and children who have suffered serious deterioration in their mental health after prolonged offshore detention.

Approximately 400 of those brought to Australia for medical treatment have commenced legal proceedings in the High Court of Australia to prevent their return to harm on Nauru or Manus. The cases generally contend that the clinical purpose or purposes for which the person was brought to Australia remains ongoing and/or that they would face a significant risk of serious harm if sent back to Nauru or Manus. The HRLC are the legal representatives for 174 of this group and coordinate legal assistance for another 193 people, in total assisting 367 of the affected group.

The legal cases remain on foot but have not proceeded to hearing. In each individual case, the Australian Government or its representatives have provided undertakings that there is no present intention to remove the people involved in the case to a Regional Processing Country and that 72 hours' notice will be provided should that position change. These undertakings have obviated the immediate need for a court hearing, since it would be premature for the highest court in the country to assess the legality of an involuntary deportation that the government formally undertakes it has no present intention to carry out.

As such, the cases remain on hold and members of this group have been in Australia for an extended period – some for as long as three years. Many of the group, including all families and children, have been living in public housing paid for by the Australian Government and have been receiving regular social security payments at the rate of 60% of the entitlement paid to other eligible people in Australia.

3) Measures complained of

Since 28 August 2017, the Australian Government has imposed 'final departure Bridging E Visas' on over 60 people from this cohort and told them that they must make arrangements to leave Australia within the next six months. The details of these visas are contained in the attached letter dated 28 August 2017 and in the document entitled 'Information about the final departure Bridging E Visa'⁷.

The key consequences of this new visa and the accompanying government directions are that all social security payments are terminated immediately and that the affected people have three weeks to vacate their government-supported accommodation (public housing). They will have the right to work, but are not entitled to undertake study or training (unless they are under 18 years). The government claims that because they are entitled to work, they are not being made destitute.

⁷ See here:

<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/59a38f73f5e2318004be0c3c/1503891349080/Final+departure+Bridging+E+Visa.pdf>

However, it is extremely unlikely that many of the group will be able to obtain paid work in these circumstances, given that:

- They are on conditional six month visas and have been told they need to leave Australia – a very uncertain prospect for any potential employer;
- They have been detained for several years, during which time they have been legally barred from working (paid or volunteer) or from undertaking any formal training and they continue to be banned from studying or training under the terms of the new visa; and
- They are highly vulnerable, with many suffering from serious physical or mental health issues - a circumstance the Australian Government itself has recognised in making the decision to evacuate them from Nauru and Manus and bring them to Australia for medical treatment.

The standard letter sent to affected people by the Australian Immigration Department says:

You will be expected to support yourself in the community until departing Australia...

From Monday 28 August you will need to find money each week for your own accommodation costs. From this date, you will also be responsible for all your other living costs like food, clothing and transport. You are expected to sign the Code of Behaviour when you are released into the Australian community.

Families have not yet been included in the group of over 60 people who have received this new visa, but it is feared that more visas will be issued to others in the cohort, including families. Indeed, the explanatory documents being distributed by the Australian Government make specific reference to the implications of these visas for children.

It is estimated that the total number of people potentially affected is over 400, including more than 50 babies and toddlers born in Australia and who have never left Australia (but who are nevertheless classified as unauthorised maritime arrivals under Australian law) and 66 children currently attending Australian schools.

The affected group also includes 83 single men and 14 single women. More than 20 women in the potentially affected group have suffered sexual assault or rape in their past, some whilst they were being held on Nauru. The cohort also includes men who were attacked and injured on Manus Island and children who were so traumatized by offshore detention that they needed psychiatric care in Australia.

On 29 August 2017, the UN High Commissioner for Refugees issued a statement condemning the Australian Government's measures:

The Australian Government's announced change in legal status and withdrawal of support to refugees and asylum-seekers is a blatant attempt to coerce the most vulnerable to return to Papua New Guinea, Nauru, or their countries of origin. Removing accommodation and financial support leaves

people at serious risk of destitution in Australia. Equally, the withdrawal of access to basic services such as trauma and torture counselling will exacerbate their already precarious situation.⁸

Effect and intent of the measures

The purpose and effect of these government actions is to cut off vulnerable people from basic supports as a means of pressuring them to return to a place where they fear serious physical and/or psychological harm.

The government actions risk rendering affected people homeless and destitute as they will have no income support and little chance of finding work to provide for their food, housing, clothing and other basic needs (although they will have some access to healthcare). Given the tight housing market in Australian cities and the lack of income support, these people will be at high risk of homelessness once evicted. In the Australian context, this amounts to a situation of extreme poverty.

The intent of the policy is clear from public statements by government Ministers:

- Human Services Minister Mr Alan Tudge, said the move was designed to ensure that people who have arrived by boat and sought asylum will never be allowed to stay. ‘They will be settled elsewhere. That’s what this is about,’ he said, adding that he did not think it was unreasonable to withdraw taxpayer support if the affected group refuse to return back to Manus or Nauru.⁹
- In a radio interview, the Minister for Immigration and Border Protection, Mr Peter Dutton, accused asylum seekers of using legal cases (i.e. cases in which a person asserts their basic rights under Australian law and which the Minister is fully able to contest on the merits) to manipulate the system and as a way to escape Australia’s offshore camps on Manus Island and Nauru. ‘I think people believe in a fair go, but this is ripping the system off’, he said. ‘We’ve given notice to almost 60 of them to say that the game is up and we aren’t going to provide you with the housing — the welfare will stop’. ‘The medical assistance has been provided and there is no need for them to remain in Australia and yet, through these legal moves, they’ve found themselves a way’ Mr Dutton said,¹⁰ before going on to criticise lawyers providing legal assistance to the affected men, women and children as ‘unAustralian’.¹¹
- Veterans’ Affairs Minister Dan Tehan said the government did not want asylum seekers to burden the welfare system and that the government ‘will not allow people to resettle who have come here by boat.’¹²

⁸ See here: <http://www.unhcr.org/en-au/news/press/2017/8/59a538a27/australia-should-not-coerce-vulnerable-people-to-return-to-harm.html>

⁹ See <http://www.sbs.com.au/news/article/2017/08/27/shocking-cruelty-government-launches-welfare-crackdown-asylum-seekers-australia>

¹⁰ <https://www.nytimes.com/2017/08/28/world/australia/immigration-peter-dutton-asylum.html?mcubz=3>

¹¹ <http://www.smh.com.au/federal-politics/political-news/lawyers-representing-asylum-seekers-are-unaustralian-peter-dutton-20170827-gy5ci7.html>

¹² See <http://www.skynews.com.au/news/top-stories/2017/08/28/govt-cuts-asylum-seeker-welfare.html>

4) Human rights law

Australia ratified the:

- International Covenant on Economic, Social and Cultural Rights (ICESCR) on 10 December 1975;
- International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 8 August 1989; and
- International Covenant on Civil and Political Rights on 13 August 1980.

Obligations and violations with respect to the ICESCR

Australia has recognised the right to social security as provided for in Article 9 of ICESCR and Articles 22 and 25(1) of the Universal Declaration of Human Rights.

As the Committee on Economic, Social and Cultural Rights (CESCR) has said:

The right to social security is of central importance in guaranteeing human dignity for all persons when they are faced with circumstances that deprive them of their capacity to fully realize their Covenant rights.¹³

As set out in General Comment No. 19 on the right to social security, social security must be 'available', 'adequate', 'accessible' and it must sufficiently cover social risks and contingencies, including sickness, unemployment, family and child support. The core State obligations include:

To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education.¹⁴

The Committee specifically states that refugees and asylum seekers 'should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support, consistent with international standards.'¹⁵

The Australian Government's withdrawal of social security benefits contravenes its core obligations under Article 9 ICESCR.

The Australian Government's withdrawal of the housing and social security supports amount to retrogressive measures. According to the CESCR, retrogressive measures are only permissible where they can be justified¹⁶ and, in the event that they are unavoidable, the measures must be necessary and proportionate.¹⁷ This means that 'the adoption of any other policy, or a failure to act, would be

¹³ CESCR General Comment No. 19, UN Doc. E/C.12/GC/19, 4 February 2008, paragraph 1.

¹⁴ CESCR General Comment No. 19, paragraph 59(a).

¹⁵ Paragraph 38

¹⁶ See CESCR General Comment No. 3, 'The nature of States parties' obligations', 5th Session, 1990, UN Doc. E/1991/23, paragraph 9.

¹⁷ CESCR Public Statement on 'Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights', 24 June 2016, UN Doc. E/C.12/2016/1, paragraph 4.

more detrimental to economic, social and cultural rights' and the measures 'should remain in place only insofar as they remain necessary; they should not result in discrimination.'¹⁸

The Committee has specifically addressed retrogressive measures in relation to the right to social security:

There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant, in the context of the full use of the maximum available resources of the State party. The Committee will look carefully at whether: (a) there was reasonable justification for the action; (b) alternatives were comprehensively examined; (c) there was genuine participation of affected groups in examining the proposed measures and alternatives; (d) the measures were directly or indirectly discriminatory; (e) the measures will have a sustained impact on the realization of the right to social security, an unreasonable impact on acquired social security rights or whether an individual or group is deprived of access to the minimum essential level of social security; and (f) whether there was an independent review of the measures at the national level.¹⁹

The withdrawal of social security and housing supports to this group of persons seeking asylum was in violation of the right to social security and has not been justified by the Australian Government on any of the grounds set out by the CESCR and there is no evidence that the government has carefully considered alternatives. In fact, the intent of the measures, as described in public statements by government Ministers, is wholly incompatible with the ICESCR as the government is using the withdrawal of social security and housing supports to a very vulnerable group of people, to force them to return to a place where they fear they will suffer further, irreparable harm. The retrogressive measures are unreasonable and they will have a very serious negative impact on all of the ICESCR rights of the affected group and drive them into poverty and destitution.

The right to adequate housing

Australia has obligations to respect, protect and fulfil the right to adequate housing of individuals, which goes beyond the right to have a roof over one's head and includes the right to live in peace and dignity, with security from outside threats.²⁰ All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats.²¹ The obligation to respect requires States to refrain from interfering with the enjoyment of the right to adequate housing and specifically, States must not carry out forced evictions.

¹⁸ *Ibid.*

¹⁹ CESCR General Comment No. 19, paragraph 42

²⁰ [ICESCR](#), article 11; CESCR General Comment No. 4, 'The Right to Adequate Housing', UN Doc. E/1992/23, 1 January 1992, paragraph 7.

²¹ CESCR General Comment 4., paragraph 8(a).

Forced evictions are the permanent or temporary removal of individuals or communities against their will from their homes or land without access to appropriate protection.²² Forced evictions may be permissible in exceptional circumstances, where they occur after all feasible alternatives to eviction are explored in consultation with the affected community, and after due process protections are afforded to the persons affected. Forced evictions must never render people homeless and States must provide alternative accommodation.

In the present case, the government has withdrawn the public housing of the affected group, giving them three weeks' notice, offering no alternative accommodation and effectively rendering them homeless. These are people who are highly unlikely to be able afford housing in the private rental market. The Australian Council of Social Services describes the current situation of housing in Australia as a 'housing affordability crisis' and says that those on social security or modest wages are increasingly being pushed out of the housing market.²³ The CESCR also recently raised concerns about the 'Persistent shortage of affordable housing, including rental housing and social housing' and the 'increased number of homeless persons' in Australia.²⁴ In recognition of the fact that these people will be made homeless, Australian charities are rallying to try and offer support and accommodation.²⁵

The government's actions thus amount to forced evictions in violation of the Article 11 of the ICESCR. The Australian Government did not consult with the affected group prior to the housing supports being withdrawn and have not provided any information about how to challenge the decision or access effective remedies.

Recent review of Australia by the Committee on Economic, Social and Cultural Rights

Australia was reviewed by the Committee on Economic, Social and Cultural Rights in May 2017 and the Committee made the following relevant Concluding Observations:

The Committee is, however, alarmed by the punitive approach taken by the State party in recent years towards asylum seekers arriving by boat without a valid visa. The Committee also remains concerned at the State party's policy of transferring asylum seekers to the regional processing centres for the processing of their claims, despite public reports on the harsh conditions prevailing in those centres, including for children. This includes acute isolation, overcrowding, limited access to basic services, including health care and education, allegations of sexual abuse by the service providers,

²² CESCR, General Comment No. 7 (1997) 'The right to adequate housing: forced evictions', UN. Doc E/1998/22 , Annex IV, 1 January 1998, paragraph 4.

²³ <http://www.acoss.org.au/housing-homelessness/> See also this report which looked at rental affordability for low income people in Australia: SGS Economics & Planning, 'Rental Affordability Index – Key Findings Report – May 2017 Release – Aged Cohorts Focus'.

https://www.sgsep.com.au/application/files/5914/9490/7746/RAI_Report_May_2017_FINAL-Small.pdf

²⁴ Committee on Economic, Social and Cultural Rights, Concluding Observations on Australia, 11 July 2017, E/C.12/AUS/CO/5, paragraphs 41(a) & (b).

²⁵ <https://www.theguardian.com/australia-news/2017/aug/30/churches-offer-sanctuary-to-asylum-seekers-left-homeless-by-coalition-cuts>

acts of intimidation, taunting and provocation, and continuing reports of suicide and self-harm (art. 2).²⁶

The Committee urged Australia to halt its offshore processing policies, close the centres on Nauru and Manus and repatriate refugees and asylum seekers being held there, to Australia.²⁷ The Committee also urged Australia to increase its level of support for asylum seekers in the community, in order to 'ensure that they enjoy an adequate standard of living'.²⁸

In immediately and completely cutting supports to the affected cohort as a means of coercing their return to the offshore centres the CESCR Committee urged Australia to close and evacuate, the Australian Government is doing precisely the opposite of what the CESCR Committee urged it to do only two months ago.

Obligations and violations with respect to the ICCPR and the CAT

Australia has an obligation under Article 7 of the ICCPR and Article 16 of the CAT to prevent acts of cruel, inhuman or degrading treatment or punishment. The UNHCR has repeatedly condemned conditions in the Regional Processing Centres as inhuman and in breach of international standards. Forcibly evicting vulnerable people and immediately and without notice cutting off all access to social security with the stated intent of coercing their return to such an environment meets the threshold of cruel, inhuman and degrading treatment.

5) The action requested

We ask the Special Rapporteurs to urgently call on the Australian Government to:

- refrain from issuing 'final departure Bridging E Visas' to any other refugees or people seeking asylum who have been evacuated from Nauru or Manus Island to Australia for medical treatment;
- immediately reinstate the housing and income supports to the more than 60 people who have been issued with these visas already and ensure that all of those people have access to adequate housing and to a sufficient income support to meet their basic needs; and
- allow all refugees and people seeking asylum who have been evacuated from Nauru or Manus Island to Australia for medical treatment to apply for refugee status in Australia and to have their protection claims assessed under Australian law.

In addition, we request the Special Rapporteurs to make a public statement condemning the actions of the Australian Government and calling on them to urgently take the steps outlined above.

Contact details:

Human Rights Law Centre (Australia)	Global Initiative for Economic, Social and Cultural Rights
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²⁶ CESCR, Concluding Observations on Australia, *op. cit.*, paragraph 17.

²⁷ *Ibid.* paragraph 18

²⁸ *Ibid.* paragraph 32(b)

Daniel Webb	Lucy McKernan
Daniel.Webb@hrlc.org.au	lucy@globalinitiative-escr.org